



## Decision

Matter of: Jay Automotive Specialties, Inc.

File: B-232079

Date: September 22, 1988

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### DIGEST

Protester which is not the low bidder is not an interested party to maintain a protest that its bid was improperly rejected as nonresponsive where protester would not be in line for award even if its protest were sustained.

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### DECISION

Jay Automotive Specialties, Inc. protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. F32604-88-B-0009, issued by Minot Air Force Base to obtain an operator for a contractor-operated automotive parts store. Jay Automotive contends that its bid should be considered low based on an application of an evaluation preference for small disadvantaged business (SDB) concerns. It further challenges the rejection of its bid based on the Air Force's determination that the bid was nonresponsive.

We dismiss the protest.

The IFB was issued as a total small business set-aside on March 4, 1988 and was amended five times. Amendment No. 002 established as applicable to the procurement standard industrial classification (SIC) code 5531 (Product Classification Code: Auto and Home Supply Stores) for purposes of small business size standards. Amendment No. 0003 then opened the solicitation to large and small businesses without deleting the SIC code. Finally, amendment No. 0005 incorporated a clause, "Notice of Evaluation Preference for Small Disadvantaged Business (SDB)," which provided a 10 percent evaluation preference for SDBs. See Department of Defense Federal Acquisition Regulation Supplement § 52.219-7007 (DAC 86-15). The other amendments are not relevant to this protest.

Bids were opened on June 14. Hust Brothers was the apparent low bidder, NAPA was second low, and Jay Automotive was third low. Based on Jay Automotive's certification that it

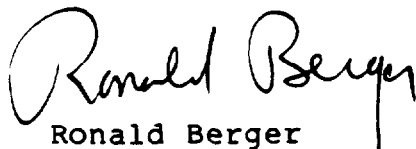
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was an SDB, the Air Force applied the 10 percent differential, which established Jay Automotive as the apparent low bidder. Upon evaluation of bids, however, Jay Automotive's bid and Hust Brother's bid were determined to be nonresponsive. According to the Air Force, Jay Automotive had failed to bid on all items in the schedule. On July 25, Jay Automotive protested this determination to our Office.

Subsequently, by letter dated August 10, the Small Business Administration (SBA) ruled that for purposes of this procurement, Jay Automotive is a large business and therefore not entitled to the SDB preference.<sup>1/</sup> Thus, NAPA became the low responsive and responsible bidder.

Since NAPA is the low responsive and responsible bidder, we will not consider Jay Automotive's contention that its bid was improperly rejected as nonresponsive. To be eligible to pursue a protest, a protester must be an interested party within the meaning of our Bid Protest Regulations, 4 C.F.R. § 21.0(a) and 21.1(a) (1988). A protester is not an interested party where, as here, it would not be in line for award if its protest were sustained. Priscidon Enterprises, Inc., B-230035, Mar. 18, 1988, 88-1 CPD ¶ 290. Since Jay Automotive is not the low bidder, it is not an interested party to have its protest considered on the merits.

The protest is dismissed.



Ronald Berger  
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<sup>1/</sup> The SBA has authority to determine a concern's status as an SDB. See DOD FAR Supplement § 19.302(5) (DAC 86-15). Jay Automotive argues that the SBA's ruling is incorrect because it used the wrong SIC code in its determination that Jay Automotive was a large business. We will not consider such a contention. If the firm disagreed with the determination, it should have properly appealed the matter within the SBA. See DOD FAR Supplement § 19.302(7) (DAC 86-15).